

Senate Bill 448-Allow County Commissioners to do weddings

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 2

DATE 2.18.09

BILL NO. SB 448

Mr. Chair, Members of the Committee,

Good Afternoon. My name is Larry Carver. I am the Justice of the Peace for Judith Basin County and have been fortunate enough to hold that position for 22 years. Today, I represent the Montana Magistrates Association as Central Vice President and act as Chairman of their Legislative Committee. The Montana Magistrates Association is the organization of the Limited Court Judges, including Justice's of the Peace, Municipal Court Judges and City Judges for the State of Montana. The Magistrates Association currently represents 101 members of the 110 judges in the State.

*MR. CHAIRMAN, I HAVE PREPARED WRITTEN TESTIMONY
IN THIS MATTER & REQUEST THAT I MAY READ IT INTO THE RECORD.*

The Magistrates oppose the passage of Sb-448 as submitted in its' current form. We do not oppose the language in subsection (1) that allows County Commissioners to solemnize a marriage. As a matter of fact the majority of the Judges endorse this proposal. The problem arises in Subsection (5) A and B. The specific language of subsection 5A states "A judge of a court of record, a public official whose powers include solemnization of marriage, a county commissioner, mayor, city judge or justice of the peace who solemnizes a marriage may impose a fee for solemnization." That statement clearly allows public officials to impose a fee for solemnization. What about everyone else? Tribal Judges, priests, ministers, and fees imposed by other members of religious denominations and costs imposed for any other mode of Solemnization? The statute would not authorize these groups to impose a fee. The implication of the statute is that the public officials as listed are the only ones allowed to impose a fee.

But most importantly, the Magistrates Association strongly opposes subsection B which states *“If a fee is imposed, 50% of the revenue must be forwarded to the appropriate local governmental entity to be used in enhancing court security and 50% may be retained by the person solemnizing the marriage.”* Members of the committee the term “enhancing court security” is a very broad term. This provision does not provide a plan for court security. In most rural counties there is no court security. Who is going to provide it? Who is in charge of the fund? Who decides what level of court security is needed? Since a major portion of the revenue will be created by a judge on evenings, weekends and holidays, will the Judge decide how the money should be distributed?

Next “enhancing court security for whom?” District Courts, Justice Courts, Municipal Courts, City Courts or tribal courts? I have been a Justice of the Peace for a rural county for 22 years. During that time I have presided over approximately 300 weddings or more. In our County, I am only aware of 4 other weddings being performed by public officials besides limited court judges. Of those, three have been conducted by three different District Court Judges and one by a mayor from another town outside of our county. There may be a few more that I am not aware of, but not very many.

Being the only local Judge in our community, I have never charged for a wedding conducted during office hours and have very rarely charged a fee for conducting a wedding ceremony within Judith Basin County. Over 90% of these estimated 300 or more weddings are conducted after business hours and held on weekends, evenings and/or holidays. However, if I did charge a fee, considering the statistic of 300 ceremonies to 4, which court is getting “enhanced court

security?" Am I working evenings and weekends to provide court security for the District Court, City Court or the Justice Court? The only law enforcement in our county is the local Sheriff. If this revenue is used by the Sheriff, Montana Code Annotated requires the Local Sheriff to attend District Court while in session. No such requirement exists for the limited courts. This bill does address how the funding is distributed.

Next, the proposed language of this bill states that "*if a fee is imposed 50% of the revenue is to be forwarded to the local governmental entity.*" Again, I have questions about term local governmental entity as used in this context. I have conducted weddings in Gallatin, Lewis & Clark, Missoula, Broadwater, Flathead, Carbon, Cascade, Fergus, Choteau and Meagher Counties to name a few. Since many the weddings were conducted within Cities of the above mentioned counties, does the money go to the City or the County that the wedding was performed in, the county that the marriage license was purchased in or does the money go to my local entity. Again, open for interpretation.

Finally, performing weddings has never been a function of the court. This is a private transaction between a Judge and private individuals. No statute currently requires a Judge to perform a wedding or specifies any type of fees. Solemnizing a marriage has been a voluntary, extra curricular function of the presiding Judge. However, if 50% of an imposed fee is to be transferred to a local entity and because all governmental agencies are audited, an audit trail will now have to be developed. Therefore, the term fee needs to be addressed. As we sometimes travel to conduct weddings in many other counties, would per diem be part of an imposed fee? In

many instances, wedding are performed at resorts and in locations that exceed the state allowed per diem. Will the excess be taken out of the Judges 50%?

Will the official be required to submit the total to each local governmental agency and wait to receive their 50%. The auditor's will want to know the total amount collected to ensure that the local entity is getting their share. The public official will not want to pay income tax on the total amount received if only retaining 50%. Routinely, a wedding couple will send a thank you card and a coupon for a meal at local restaurant. Will that coupon have be cashed and split with the local entity?

Getting married by a limited court judge such as a Justice of the Peace has been a tradition dating back to a time while Montana was still a territory. The citizens of Montana seem to be pleased with this service. The majority of the people that request us to marry them usually are doing so because they do not want or cannot afford an big expensive wedding. Many Judges never charge a fee for a wedding and for those that do, have not set a standard fee. In most locations fees greatly vary considering the time and location of the wedding, the financial ability of the couple or whether or not the official has to preside over a rehearsal and the marriage ceremony or just the ceremony. This week I have spoken with numerous judges about weddings. The majority of those judges do not assess a fee during court hours. The few Judges that do, were approved to do so or told to do so by the local County Commissioners.

The passage of this bill could very well create a negative impact in many ways. First, many Limited Court Judges will stop performing marriage ceremonies because of the hassle it will

cause to impose fee. Secondly, any existing fee will probably double as these Judges are performing this service on their own time and do not deserve to perform these ceremonies for half of what they usually charge. Finally, Judges who usually don't charge a fee and/or for ceremonies conducted during Court hours will now be assessing fees in order to create funding to obtain their own court security. In many instances, the public official will be expected to completely fund court security.

Montana Code Annotated 3-10-103, requires County Commissioners to provide the facilities, staff, books, equipment and supplies for the operation of the court. A law that the Montana Supreme has upheld and that the Attorney General recently upheld in his formal opinion. We also believe, considering the clientele that we deal with, that the Judges and court staff are entitled to a safe work environment.

Members of the committee, the Magistrates are more upset and concerned over this piece of legislation than any other legislative proposal submitted during the last three legislative sessions, while I have been the legislative chair. However, the issue really isn't about the money. If money was the issue, the Judges would oppose the proposal that County Commissioners could perform weddings because of the competition. They do not. Secondly, any fee currently imposed could simply be doubled and the judge would still receive their standard fee. The fact is, the judges are giving up their own personal time to provide an inexpensive, professional service to their constituents and they feel good about it. In many instances a ceremony for free. If this bill passes, the Judges will be expected to create the revenue to fund a portion of their own court. If that expectation did not exist, we would not be here today.

It simply does not make sense to require Judges to give 50 % of a fee legally earned on their own time, after hours and on weekends in order to obtain a safe work environment. No other public official is expected to provide extra income earned on their own personal time to fund the operating expenses of their individual offices. Nor should we.

THE MONTANA MAGISTRATES RESPECTFULLY REQUEST THAT THE COMMITTEE
VOTE NO ON SB-448.

THANK YOU. I WILL BE GLAD TO ANSWER ANY QUESTIONS.